

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Atty. Docket No.:	006071.00001
Janne Aaltonen <i>et al.</i>		
Serial No.: 10/074,238	Group Art Unit:	2143
Filed: February 14, 2002	Examiner:	Bilgrami, Asghar H.
For: Method and Apparatus for Accessing Data	Confirmation No.:	6235

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Sir:

Applicants respectfully request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

Remarks

Having received and reviewed the final Office Action dated February 25, 2009, Applicants respectfully submit that the standing rejections are based on one or more clear errors, and that the appeal process can be avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

The pending rejections fail to address all the claim limitations, and exhibit clear factual and legal errors with respect to the cited references. The specific errors relied upon in this Pre-Appeal Brief Request for Review include the following:

- The Office erred in its combination of Herz *et al.* (U.S. Patent Pub. No. 2001/0014868, “Herz”) and Birdwell *et al.* (U.S. Patent No. 6,108,706, “Birdwell”) in rejecting claims 1-3, 5-18, 27, 29-43 and 46-51 under 35 U.S.C. §103(a), as argued in Applicant’s Response filed November 25, 2008, at pp. 9-11. Claims 1, 9 and 49 all generally relate to receiving unsolicited information from a computer network via a unidirectional network, wherein the unsolicited information contains an identifier identifying further information on the computer network, requesting, via a network different from the unidirectional network, the identified further information and receiving the further information via the unidirectional network in response to the requesting. Contrary to the assertions made in the final Office Action dated February 25, 2009, neither Herz nor Birdwell, either separately or in combination, teaches or suggests such features. At most, Herz describes the generation of coupons or advertisements that may be communicated to a shopper’s device. para. [0027]. However, Herz does not teach or suggest a unidirectional network much less two different networks, one being unidirectional. Birdwell, on the other hand, describes a broadcast network 30 and a bi-directional data network. Even so, neither reference teaches or suggests, either separately or in combination, receiving, through a first unidirectional network, unsolicited information including an identifier identifying further information, requesting the further information via another network (i.e., ***other than the unidirectional network***) and receiving the further information via the unidirectional network in response to the requesting. Even assuming, without conceding, that Birdwell describes receiving an announcement over a broadcast network and a user having the ability to request information from another network other than the broadcast network, there is still no teaching or suggestion (in either Birdwell or Herz) of the requested information then being received over the broadcast network (i.e., the alleged unidirectional network).
- By way of example, Birdwell describes at col. 5, ll. 1-14, that announcements are submitted by servers over data network 28 to inform clients of upcoming data transmissions that will be broadcast over broadcast network 30. Birdwell further states that after receiving an announcement for a desired transmission, the receiving application may be launched before the scheduled broadcast and receives the data transmission from

the broadcast receiver 54 and tuner 56. col. 5, ll. 40-46. Even assuming, without conceding, that tuning to a broadcast constitutes a request for further information identified in the announcement (i.e., the alleged unsolicited information), the request is not made through a network *other than the broadcast network* through which the unsolicited information and the further information are received; rather, the alleged request is made through the broadcast network. Stated differently, Birdwell does not teach or suggest the requesting of information to a first network and receiving the requested information through a second network different from the first network. Herz is similarly deficient. While Herz appears to suggest that a user may accept shopping offers at para. [38], Herz does not teach or suggest that the acceptance of these offers (even if they are considered requests for information identified in unsolicited information) is transmitted through a network different from a network through which the offers were received. Accordingly, claims 1, 9 and 49 are allowable for at least these reasons.

- Claims 2-8, 10-18, 29-43, 46-48 and 50 are dependent claims and are thus allowable for at least the same reasons as their respective base claims and further in view of the novel and non-obvious features recited therein. For example, claims 7, 15, 30, 38 and 39 relate to a second network including a DVB-T network. Contrary to the assertions of the Office Action, Birdwell does not teach or suggest a DVB-T network. While Birdwell describes a unidirectional broadcast network, there is no mention of DVB-T networks, specifically. The Examiner erroneously points to col. 3, ll. 23-31, ll. 40-43 and col. 4, ll. 25-34. None of those passages teach or suggest a DVB-T network. Accordingly, claims 7, 15, 30, 38 and 39 are allowable for this additional reason.
- Additionally, Applicants recognize that the Office Action is using a combination of Herz and Birdwell in rejecting the above identified claims. However, the Office Action is merely using the fact that Birdwell describes two networks to piece together the references according to the features of at least claim 1. Significantly, the Office Action does not provide any reason as to why one of ordinary skill in the art would have used the two networks of Birdwell in the manner described in claim 1 without any teaching or suggestion in either Herz or Birdwell of such features or a need for such a combination. The Office Action asserts that the combination would have been made to “provide a more

versatile and flexible way of targeting information to the users resulting in reliable multi-connectivity and customer focus driven communications network.” Applicants respectfully submit that such a reason does not provide the requisite rational underpinning required by *KSR v. Teleflex* to support a finding of obviousness.

While Applicants believe the above points represent the clearest errors made by the Office, Applicants reserve the right to appeal on other bases and errors. In addition, Applicants believe the rejections of other claims not identified above are also based on one or more Office errors. Applicants will address such issues on appeal should the appeal of this case proceed after the Office’s consideration of this paper.

CONCLUSION

All issues having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the review panel believes the application is not in condition for allowance or there are any questions, the review panel is invited to contact the undersigned at (202) 824-3156.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated this 20th Day of May, 2009

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